Supreme Court, U.S.
FILED
FEB 12 1997
CLERK

No. 96-1063

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

PETTCO ENTERPRISES, INC., *et al.*,
Petitioners,

v.

JAMES WHITE, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

H. WILLIAM WASDEN
PIERCE, LEDYARD, LATTA & WASDEN, P.C.
Post Office Box 16046
Mobile, Alabama 36616
(334) 344-5151
Counsel of Record for Respondents James White and G. Sage Lyons

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Whether Alabama's procedure for compensating claimants for damages arising from motor vehicle accidents involving correctional inmate drivers is violative of Petitioners' constitutional rights to Due Process or Equal Protection of the Laws.

LIST OF INTERESTED PARTIES

The petioners are Pettco Enterprises, Inc. and Larry B. Petty.

Alabama Department of Corrections, Legal Division, counsel for defendant-respondent

Alabama Insurance Department, counsel for defendant-respondent

Albritton, III, Hon. W. Harold—District Court Judge, United States District Court for the Middle District of Alabama, Northern Division

Baker, Jimmy H.—individually and as former Director of the Finance Department of the State of Alabama, defendant-respondent

Baker, Richard—individually and as Assistant Director of the Montgomery Work Release Center, defendant-respondent

Byrne, Alice Ann—counsel for defendant-respondent

Catalano, Michael A.—counsel for defendant-respondent

Crowson, William S.—counsel for plaintiffs-petitioners

Ferrell, Jerry L.,—individually and as Director of the Loxley Community Work Center, defendant-respondent

Forniss, Leon—individually and as Director of the Camden Work Release Center, defendant-respondent

Gullion, Edward—individually and as Director of Elba Work Release Center, defendant-respondent

Halladay, Pat—individually and as Director of the Birmingham Work Release Center, defendant-respondent

Herring, Tommy—individually and as former Commissioner of the Corrections Department of the State of Alabama, defendant-respondent

Hightower, Roy—individually and as Regional Coordinator of the Work Release Program of the Corrections Department of the State of Alabama, defendant respondent

Hollingsworth & Associates—counsel for plaintiffs-petitioners

Hollingsworth, M. Jack—counsel for plaintiffs-petitioners

Johnson, Willie—individually and as Regional Coordinator of the Work Release Program of the Corrections Department of the State of Alabama, defendant-respondent

LeCroix, Kathy Shelnutt—counsel for defendant-respondent

Leonard, Ellen Ruth—counsel for defendant-respondent

Lucas, Randall—individually and as Director of the Childersburg Community Work Center, defendant-respondent

Lyons, G. Sage—current Director of the Finance Department of the State of Alabama, defendant-respondent

McKerley, Michael L.—counsel for plaintiff-petitioner

Mitchem, Billy—individually and as Director of the Decatur Work Release Center, defendant-respondent

Newton, Glen—individually and as Director of the East Thomas Work Release Center, defendant-respondent

Norman, III, Ralph Reynard—counsel for defendant-respondent

Owen, Billy—individually and as Director of the Hamilton Work Release Center, defendant-respondent

Pierce, Ledyard, Latta & Wasden, P.C.—counsel for defendant-respondent

Pritchard, McCall & Jones, L.L.C.—counsel for plaintiffs-petitioners

Redd, Andrew W.—counsel for defendant-respondent

Reynolds, James E.—individually and as Director for the Mobile Work Release Center, defendant-respondent

Sutton, Ron—individually and as Associate Commissioner of the Corrections Department of the State of Alabama, defendant-respondent

Thurman, M.J.—individually and as Director of the Alex City Work Release Center, defendant-respondent

Tomlinson, F. Hilton-Green—counsel for plaintiffs-petitioners

Wasden, H. William—counsel for defendant-respondent

Weaver, Ronald—individually and as Director of the Atmore Work Release Center, defendant-respondent

Weaver, Mike—individually and as former Commissioner of the Insurance Department of the State of Alabama, defendant-respondent

White, Sr., James C.—individually and as former Director of the Finance Department of the State of Alabama, defendant-respondent.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF INTERESTED PARTIES	ii
TABLE OF AUTHORITIES	vi
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	5
REASONS FOR DENYING THE WRIT	6
ALABAMA'S PROCEDURE FOR COMPENSATING CLAIMANTS FOR DAMAGES ARISING FROM MOTOR VEHICLE ACCIDENTS INVOLVING CORRECTIONAL INMATE DRIVERS IS RATIONALLY RELATED TO LEGITIMATE GOVERNMENTAL OBJECTIVES, AND THEREFORE NOT VIOLATIVE OF PETITIONERS' CONSTITUTIONAL RIGHTS TO DUE PROCESS OR EQUAL PROTECTION OF THE LAWS	6
A. Petitioners' Due Process Claims: The Alabama Board of Adjustment Procedure as Applied to Petitioners Did Not Constitute a Violation of Due Process	8
B. The Alabama Board of Adjustment Procedure Is Rationally Related to Prudent Oversight of the State's Financial Resources and Does Not Violate Petitioners' Rights to Equal Protection of the Laws	13
CONCLUSION	16

TABLE OF AUTHORITIES

Cases Cited: Page

Baker v. McCollan, 443 U.S. 137 (1979) 10, 11
Bell v. Burson, 402 U.S. 535 (1971) 9
Bishop v. Wood, 426 U.S. 341 (1976) 9, 10, 11
Collins v. City of Harker Heights, Texas, 503 U.S. 115 (1992) 9, 10, 12
Cornelius v. Town of Highland Lake, Alabama, 880 F.2d 348 (11th Cir. 1989), *cert. denied*, 494 U.S. 1066 (1990) 12, 13
Daniels v. Williams, 474 U.S. 327 (1986) 9, 10
DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989) 10, 13
Federal Communications Commission v. Beach Communications, 508 U.S. 307 (1993) 14, 15
Hodel v. Indiana, 452 U.S. 314 (1981) 15
Hudson v. Palmer, 468 U.S. 517 (1984) 9
Hurtado v. California, 110 U.S. 516 (1884) 9
Ingraham v. Wright, 430 U.S. 651 (1977) 9
Lovins v. Lee, 53 F.3d 1208 (11th Cir. 1995) 13
Paratt v. Taylor, 451 U.S. 527 (1981) 9
Paul v. Davis, 424 U.S. 693 (1976) 10, 11
Planned Parenthood of Southeastern Pennsylvania v. Casey, 510 U.S. 1309 (1994) 8
Rochin v. California, 342 U.S. 165 (1952) 9
Wooten v. Campbell, 49 F.3d 696 (11th Cir. 1995) .. 12
Wright v. Lovin, 32 F.3d 538 (11th Cir. 1994) 12
Zinermon v. Burch, 494 U.S. 113 (1990) 9

Statutes Cited:

28 U.S.C. § 1254(1) 1
42 U.S.C. § 1983 ..... 7, 9
ALA. CODE, § 41-9-62 ..... 2, 12
ALA. CODE, § 41-4-30 6

Rules Cited:

Fed. R. Civ. P. 25(d)(1) 6
Fed. R. Civ. P. 56(c) 1, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. 96-1063

PETTCO ENTERPRISES, INC., *et al.*,
Petitioners,

v.

JAMES WHITE, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

Respondents request that the Court deny the petition for writ of certiorari seeking review of an order of the United States Court of Appeals for the Eleventh Circuit affirming an order of the United States District Court for the Middle District of Alabama, D.C. No. 94-A-240-N, dismissing plaintiffs' claims pursuant to Fed. R. Civ. P. 56(c).

STATEMENT OF JURISDICTION

This Court cannot properly exercise jurisdiction over the second question presented for review by Petitioners under 28 U.S..C § 1254(1) since the question as framed is a matter of the state law governing employer and employee which doesn't invoke U.S. constitutional concerns, and wasn't raised in the Court of Appeals.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent incorporates by reference those constitutional provisions and statutes cited by petitioners, and further cite the Court to the following statutory provisions from the Code of Alabama 1975:

> ALA. CODE, § 41-9-62. Jurisdiction of board to hear certain claims:
>
> (a) The Board of Adjustment shall have the power and jurisdiction and it shall be its duty to hear and consider:
>
> (1) All claims for damages to the person or property growing out of any injury done to either the person or property by the State of Alabama or any of its agencies, commissions, boards, institutions or departments, with the exception of claims by employees of the state for personal injury or death arising out of the course of employment with the State of Alabama, where such employees are covered by an employee injury compensation program;
>
> (2) All claims for personal injuries to or the death of any convict, and all claims for personal injuries to or the death of any employee of a city or county board of education, or college or university, arising out of the course of the employee's employment and where the employee is not covered by a worker's compensation program;
>
> (3) All claims of members of the public at large or of officers of the law who are not employees of the state arising out of injuries sustained while attempting to recapture escaped convicts, which convicts have escaped after they have been placed in the actual custody of the Department of Corrections;
>
> (4) All claims against the State of Alabama or any of its agencies, commissions, boards, institu-

tions or departments arising out of any contract, express or implied, to which the State of Alabama or any of its agencies, commissions, boards, institutions or departments are parties, where there is claimed a legal or moral obligation resting on the state;

(5) All claims for money overpaid on obligations to the State of Alabama or any of its agencies, commissions, boards, institutions or departments;

(6) All claims for money voluntarily paid to the State of Alabama or any of its agencies, commissions, boards, institutions or departments, where no legal liability existed to make such payment;

(7) All claims for underpayment by the State of Alabama or any of its agencies, commissions, boards, institutions or departments to parties having dealings with the State of Alabama or any of its agencies, commissions, boards, institutions or departments;

(8) All claims for money or property alleged to have wrongfully escheated to the State of Alabama; and

(9) All claims for injury or death of any student duly enrolled in any of the public schools of this state resulting from an accident sustained while being transported to or from school or in connection with any school activity in any bus or any motor vehicle operated directly by any school board or agency of the state or through contract with another. Awards payable to any such student for injuries sustained in such accident shall be equal to the maximum benefits payable to employees as provided in Chapter 5 of Title 25 for injuries, loss of time or medical attendance; and, where death results from such injuries, the amount payable to the parent or parents of such student shall be equal to the maximum amount payable to a totally dependent parent or parents as provided by Chapter 5 of Title

25, provided, however, that no payment for death of such student shall be made to any parent or parents unless they were actually supporting such student at the time of the accident causing the injuries and death. The fact that such student has no earning capacity or earns an average wage of less than the amount which would entitle him to maximum benefits under Chapter 5 of Title 25 shall in no way limit an award to him, his parent or parents. Awards for such injuries or death shall constitute a prior and preferred claim against moneys appropriated for the minimum program fund, and no part of any such award shall be charged against any funds allotted to the school board of the county or city or the district board of education of the independent school district where said accident occurred. If it should appear to the Board of Adjustment after investigation that the accident causing the injury or death of such student was caused under circumstances also creating a legal liability for damages on the part of any party and it should further appear to the Board of Adjustment that claim may be made against such party by such student, his parent or legal representative to recover damages, then, in that event, any payment otherwise due under this subdivision may be withheld by the Board of Adjustment pending final settlement of such claim and, if said student or his parent or legal representative recovers damages against said party, any sum so recovered and collected may be offset against payments due under this subdivision, and the balance due, if any, shall thereafter be promptly paid by the Board of Adjustment. The provisions of this subdivision shall apply to all claims relating to injuries to school children filed with said board within one year of the date of an accident. Minor students shall have, for the purpose of this subdivision, the same power to contract, make elections of remedy, make settlements and reecive compensation as adults would have subject to the power of the Board of Adjustments in its discretion at any time to require

the appointment of a guardian to receive moneys or awards and payments of awards made to such minor students or their guardian shall exclude any further compensation either to the minor students or to their parents for loss of service or otherwise.

(b) The jurisdiction of the Board of Adjustment is specifically limited to the consideration of the claims enumerated in subsection (a) of this section and no others; provided, that nothing contained in this division shall confer upon the Board of Adjustment any jurisdiction now conferred by law upon the State Board of Compromise provided for in Sections 41-1-3 and 41-1-4, and nothing contained in this division shall be construed to confer jurisdiction upon the Board of Adjustment to settle or adjust any matter or claim of which the courts of this state have or had jurisdiction; provided further, that the Board of Adjustment shall have no jurisdiction over claims growing out of forfeitures or of contracts with any state agency, commission, board, institution or department where, by law or contract, said state agency, commission, board, institution or department is made the final arbiter of any disagreement growing out of forfeitures or of contracts of said state agency, commission, board, institution or department, and, particularly, the Board of Adjustment shall have no jurisdiction of disagreements arising out of contracts entered into by the Department of Transportation.

(c) Employees of municipalities and counties are not to be considered employees of the State of Alabama or of any of its agencies, commissions, boards, institutions or departments within the jurisdiction of "employee" as used in this section.

STATEMENT OF THE CASE

Respondents adopt the Statement of the Case as set forth in Petitioners' principal brief, with the following supplemental statements of procedural history and fact.

Respondents James White, Jimmy H. Baker, and G. Sage Lyons

At the time suit was filed in this matter, James White was serving as Director of Finance for the Department of Finance for the State of Alabama. The Director of Finance is appointed and holds such office "at the pleasure of the governor." *See* § 41-4-30, ALA. CODE 1975. After the election of the incumbent governor of Alabama in November 1994, James White was relieved of his position and Governor Fob James appointed Jimmy H. Baker as the new Director of Finance in February 1995. In June 1996, Governor Fob James appointed G. Sage Lyons as Director of Finance. Pursuant to Fed. R. Civ. P. 25 (d)(1), Mr. Baker and Mr. Lyons were automatically substituted as parties upon their respective and subsequent appointments as Mr. White's respective successors. Mr. White remained in the litigation in his individual capacity prior to the issuance of the District Court's Order granting summary judgment.[1]

REASONS FOR DENYING THE WRIT

ALABAMA'S PROCEDURE FOR COMPENSATING CLAIMANTS FOR DAMAGES ARISING FROM MOTOR VEHICLE ACCIDENTS INVOLVING CORRECTIONAL INMATE DRIVERS IS RATIONALLY RELATED TO LEGITIMATE GOVERNMENTAL OBJECTIVES, AND THEREFORE NOT VIOLATIVE OF PETITIONERS' CONSTITUTIONAL RIGHTS TO DUE PROCESS OR EQUAL PROTECTION OF THE LAWS.

Claims against government officials under 42 U.S.C. § 1983 typically allege a constitutional right to be free from unreasonable risks of harm to person and property, and/or a constitutional right to be protected from the

---

[1] This portion of the procedural history was omitted from the Memorandum Opinion below and not addressed in Petitioners' principal brief.

governmental entity's disputed custom and policy of deliberate indifference.

In the case *sub judice,* Petitioners advance a novel claim: the constitutional right to be free from *uninsured* risks of harm, which risks are not in themselves unreasonable. The "risk" at issue is the risk of potential injuries to person and property resulting from collisions with state-owned motor vehicles that may be operated by state correctional inmates. Damages arising from such incidents may be compensated through the administrative forum established through the Board of Adjustment for the State of Alabama. Petitioners therefore cannot and do not claim that Respondents deny a method of damages compensation. Petitioners invoke Federal trial and appellate jurisdiction seeking to compel the State of Alabama to provide a more satisfactory method of insurance coverage for state vehicles operated by inmates of the state's correctional system separate and apart from the Board of Adjustment.

The District Court's memorandum opinion cogently addresses Petitioners' meandering claims and properly disposed of such claims by dismissal pursuant to Fed. R. Civ. P. 56(c).

In their principal brief before this Court, Petitioners frame the questions for review as follows:

> 1. Are the rights of due process and equal protection of the citizens of the State of Alabama, and all those similarly situated, denied or violated, within the meaning of 42 U.S.C. § 1983, by a means established by the State of Alabama for recovery of injuries sustained by third parties due to motor vehicle accidents in which the driver at fault is a work-release or other inmate of the State correctional system, when that compensation is not equivalent to the compensation established by the State for injuries sustained by third parties due to motor vehicle acci-

dents when the driver at fault is a State agent or employee?

2. Are work release or other inmates of the State of Alabama to be considered "employees" of the State for purposes of those State policy and procedures, legislatively established, to compensate third parties for injuries sustained due to motor vehicle accidents where the vehicles at fault is operated by a State agent or employee?

Petitioners' Brief, at i.

Petitioners framed their questions somewhat differently before the Court of Appeals, and in fact, their second question, although posed as an employer/employee issue, is argued in brief before this Court as a basic constitutional equal protection issue. Respondents submit that the second question as framed for review by this Court is jurisdictionally barred since it was not presented to the Court of Appeals other than in the context of a constitutional claim.

The constitutional issues raised in the Court of Appeals, and presented by Petitioners in their first question for review by this Court, are addressed below in the sequence presented by Petitioners.

A. Petitioners' Due Process Claims: The Alabama Board of Adjustment Procedure as Applied to Petitioners Did Not Constitute a Violation of Due Process.

The Due Process Clause of the Fourteenth Amendment is understood to incorporate both a procedural and a substantive element. *See Planned Parenthood of Southeastern Pennsylvania v. Casey,* 510 U.S. 1309 (1994). Petitioners do not raise a claim of deprivation of procedural due process, and appear to focus on the substantive element. The guarantee of substantive due process has historically been applied to deliberative decisions of government officials involving deprivations of one's life,

liberty, or property. *Collins v. City of Harker Heights, Texas,* 503 U.S. 115, 126-127 (1992), *citing Davidson v. New Orleans,* 96 U.S. 97 (1878) (assessment of real estate), *Rochin v. California,* 342 U.S. 165 (1952) (stomach pumping); *Bell v. Burson,* 402 U.S. 535 (1971) (suspension of driver's license); *Ingraham v. Wright,* 430 U.S. 651 (1977) (paddling student); *Hudson v. Palmer,* 460 U.S. 517 (1984) (intentional destruction of inmate's property).

These actions are typically brought by plaintiffs under 42 U.S.C. § 1983 to obtain remedies for a State official's violation of the rights protected by the Bill of Rights, including the right to freedom of speech, and from unreasonable searches and seizures. *Zinerman v. Burch,* 494 U.S. 113, 125 (1990). These actions all involve foreseeability of substantial risk of injury to persons and property, and are both factually and legally distinguishable from the "risks" identified by Petitioners.

A second substantive element of the Due Process Clause proscribes arbitrary and wrongful state action irrespective of the fairness of the procedures utilized in carrying out the action. *Daniels v. Williams,* 474 U.S. 327, 331 (1986). Prior to the decision in *Parratt v. Taylor,* 451 U.S. 527 (1981), the Court did not view negligent conduct by a state official, even conduct causing injury, as constituting a deprivation under the Due Process Clause. The Due Process Clause was traditionally interpreted as being "intended to secure the individual from the arbitrary exercise of the powers of government," *Hurtado v. California,* 110 U.S. 516 (1984), *quoted in Daniels, supra,* 474 U.S. at 331.

Now Petitioners advance an unprecedented argument that they are constitutionally entitled to state-funded insurance from risks of potential accident injury to person or property arising from the operation of state-owned vehicles by correctional inmates. Neither the text nor the

history of the Due Process Clause supports Petitioners' claim as a substantive component of the Due Process Clause. "[T]he Due Process Clause of the Fourteenth Amendment was intended to prevent government 'from abusing [its] power, or employing it as an instrument of oppression.'" *Collins, supra, quoting DeShaney v. Winnebago County Department of Social Services,* 489 U.S. 189, 196 (1989) (*quoting Davidson v. Cannon,* 474 U.S. 344, 340 (1986)). As this Court recognized in *DeShaney,* "[t]he Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without 'due process of law,' but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text." *Id.,* 489 U.S. at 195.

As the Court further recognized in *DeShaney,* actions sounding in common-law tort, such as Petitioners' claims, proscribe analysis as federal constitutional violations:

> But the claim here is based on the Due Process Clause of the Fourteenth Amendment, which, as we have said many times, does not transform every tort committed by a state actor into a constitutional violation. See *Daniels v. Williams,* 474 U.S., at 335-336, 106 S.Ct., at 667; *Parratt v. Taylor,* 451 U.S., at 544, 101 S.Ct., at 1917; *Martinez v. California,* 444 U.S. 277, 285, 100 S.Ct. 553, 559, 62 L.Ed.2d 481 (1980); *Baker v. McCollan,* 443 U.S. 137, 146, 99 S.Ct. 2689, 26, 61 L.Ed.2d 433 (1979); *Paul v. Davis,* 424 U.S. 693, 701, 96 S.Ct. 1155, 1160, 47 L.Ed.2d 405 (1976). A State may, through its courts and legislatures, impose such affirmative duties of care and protection upon its agents as it wishes. But not "all common-law duties owed by government actors were . . . constitutionalized by the Fourteenth Amendment." *Daniels v.*

Williams, supra, 474 U.S., at 335, 106 S.Ct., at 667.

Id., at 202.

Respondents' governmental actions and policies in the case at bar can hardly be characterized as arbitrary, or conscience-shocking, in a constitutional sense. Petitioners' claims would be analogous to a typical state common-law tort claim: the State allegedly breached its duty of care to plaintiffs and other members of the public by negligently entrusting state-owned vehicles and/or by failing to provide insurance coverage for such vehicles.[2] Such claims clearly do not rise to the level of federal constitutional infringement. The Due Process Clause "does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society". *Daniels, supra,* 474 U.S. at 332. On such reasoning this Court has previously rejected claims that the Due Process Clause should be interpreted to impose federal duties that are analogous to those traditionally imposed by state tort law. *See, e.g., id.*, at 332-333; *Baker v. McCollan*, 443 U.S. 137, 146 (1979); and *Paul v. Davis*, 424 U.S. 693, 701 (1976).

The State's implementation of government policies and procedures under these facts is based on a rational decision making process that is reflective of competing social, political, and economic forces. A review of the statutory

---

[2] Petitioners have failed to establish the evidentiary burden of proof necessary to even substantiate these claims under tort law, such as a pattern of known reckless behavior by inmate drivers. There has been no competent evidence presented in this action which tends to prove that correctional inmates, as a group of motor vehicle operators, actually pose any greater risk to the traveling public than other motor vehicle operators. Petitioners attempt to circumvent this weakness in their argument by the colorful descriptions of inmate drivers as "unguided missiles," with their very presence on the roadways creating an unreasonably dangerous condition. (Petitioners' Brief, at 20)

basis for the Board of Adjustment claims process[3] reveals a broad and deliberate approach for administratively compensating claimants against the State for a variety of grounds and claims, including claims where only a "moral obligation" is asserted for the claim. Decisions concerning the allocation of resources to individual state agencies and departments, such as liability coverage for the operation of State-owned vehicles, involve a variety of policy decisions that "must be made by locally elected representatives, rather than by federal judges interpreting the basic charter of Government for the entire country. The Due Process Clause 'is not a guarantee against incorrect or ill-advised personnel decisions.'" *Bishop v. Wood*, 426 U.S. 341, 350 (1976). Neither does the Due Process Clause address the availability of insurance to cover reasonable risks of harm as the consequence of human activity.

The Petitioners' argument in brief continues to rely upon *Cornelius v. Town of Highland Lake, Alabama*, 880 F.2d 348 (11th Cir. 1989), *cert. denied*, 494 U.S. 1066 (1990), while simultaneously recognizing the Court of Appeals' subsequent doubts as to the precedential value of that decision after *Collins*. In its Memorandum Opinion, the District Court noted that two panels of the Eleventh Circuit have expressed doubt about the continuing viability of the *Cornelius* decision, citing *Wooten v. Campbell*, 49 F.3d 696, 700 n. 4 (11th Cir. 1995) ("There is some question whether this Court's holding in *Cornelius* survived the Supreme Court's decision in *Collins*. . . ."), and *Wright v. Lovin*, 32 F.3d 538, 541 n. 1 (11th Cir. 1994) ("We note that there is some doubt whether our holding in *Cornelius* has survived the Supreme Court's recent holding in *Collins*. . . .").

The District Court correctly reasoned that even if *Cornelius* remained good law, it was distinguishable from the case at bar. The *Cornelius* plaintiff was a female employee of city hall who, in order to keep her job, had

---

[3] ALA. CODE § 41-9-62.

to work around work squad inmates. It was that employment posture which created a special relationship between the city and the plaintiff, according to the *Cornelius* court's reasoning. *Cornelius*, 880 F.2d at 355. By contrast, in the case before the Court there is no special relationship, employment or otherwise, between the Petitioners and the Respondents. *See Lovins v. Lee*, 53 F.3d 1208, 1211 (11th Cir. 1995).

This Court's closing paragraph in *DeShaney, supra,* also quoted by the Eleventh Circuit in *Lovins, supra,* is equally applicable in the disposition of Petitioners' Due Process grievances concerning Alabama inmates behind the wheel of state vehicles:

> The people of Wisconsin may well prefer a system of liability which would place upon the State and its officials the responsibility for failure to act in situations such as the present one. They may create such a system, if they do not have it already, by changing the tort law of the State in accordance with the regular lawmaking process. But they should not have it thrust upon them by this Court's expansion of the Due Process Clause of the Fourteenth Amendment.

Id., at 1211.

The District Court expressed this same rationale with respect to Petitioners' claims: "[A]t best, this is an inequitable situation to be remedied by State legislation. It does not rise to the level of a violation of the United States constitution." Memorandum Opinion, at 28.

B. The Alabama Board of Adjustment Procedure Is Rationally Related to Prudent Oversight of the State's Financial Resources and Does Not Violate Petitioners' Rights to Equal Protection of the Laws.

Petitioners contend that it is a denial of equal protection for the State to provide automobile liability insurance for its agents and employees who drive State-owned vehi-

cles and then allow inmates to drive State-owned vehicles without providing them with insurance. The inmates are statutorily defined not to be state agents or employees. As stated above, Petitioners are not without a remedy since they may file claims with the State Board of Adjustment, and in fact, Petitioners indignantly refused payment from the Board when such payment was first offered. Petitioners' only claim of deprivation is that they do not have the benefit of a satisfactory insurer, either commercial or self-insured coverage, as to this type risk. Petitioners therefore argue that their rights to equal protection should require the State to either insure inmate drivers on the same basis of other state employee drivers, or prohibit inmates from driving State-owned vehicles.

Petitioners' equal protection argument is presented against the background of extensive contrary decisional precedent. In fact, Petitioners curiously acknowledge the strong position taken by this Court in *Federal Communications Commission v. Beach Communications*, 508 U.S. 307 (1993), and then proceed to argue against the Court's reasoning in that opinion.

Respondents urge the Court to adhere to its rationale in *Beach* as applied to Petitioners' claims:

> Whether embodied in the Fourteenth Amendment or inferred from the Fifth, equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. *See Sullivan v. Stroop*, 496 U.S. 478, 485, 110 S.Ct. 2499, 2504, 110 L.Ed.2d 438 (1990); *Bowen v. Gilliard*, 483 U.S. 587, 600-603, 107 S.Ct. 3008, 3016-3018, 97 L.Ed.2d 485 (1987); *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 174-179, 101 S.Ct.

> 453, 459-462, 66 L.Ed.2d 368 (1980); *Dandridge v. Williams,* 397 U.S. 471, 484-485, 90 S.Ct. 1153, 1162, 25 L.Ed.2d 491 (1970).

Beach, supra, 508 U.S. at 313-314.

The District Court properly and succinctly disposed of Petitioners' equal protection claim as follows:

> [P]laintiffs do not contend, nor does this court find, that the scheme set up by Alabama law involves any suspect classification or fundamental right. What 'discrimination' may exist is not invidious; the Alabama statutory provisions and the decisions of the State agencies implementing them are rationally related to the State's legitimate interest in saving money and allocating scarce State resources efficiently. Petitioners devote a substantial portion of their brief in opposition to the Motions for Summary Judgment to discussing the reason that Alabama has made such a decision. In the words of the plaintiffs, 'there is only one answer and that is money.' By their own arguments, plaintiffs acknowledge the State's legitimate interest and the connection between the challenged practices and that interest.

Memorandum Opinion, at 15-16. The District Court proceeded to hold that the decision to utilize inmate drivers was not arbitrary: "[I]t is a decision authorized by State law and rationally-related to the goal of saving the State of Alabama money." *Id.*, at 17.

The District Court's dismissal was proper under these findings. "Social and economic legislation . . . that does not employ suspect classifications must be upheld against equal protection attack when the legislative means are rationally related to a legitimate governmental purpose." *Hodel v. Indiana,* 352 U.S. 314, 331 (1981) (citations omitted).

CONCLUSION

Petitioners have failed to prove cognizable violations of the U.S. Constitution. Respondents' denial of a method of insurance coverage separate and apart from its administrative method of handling Petitioners' damage claims is not violative of Petitioners' constitutional rights of due process or equal protection. The writ of certiorari should be denied.

Respectfully submitted,

H. WILLIAM WASDEN
PIERCE, LEDYARD, LATTA & WASDEN, P.C.
Post Office Box 16046
Mobile, Alabama 36616
(334) 344-5151
Counsel of Record for Respondents James White and G. Sage Lyons